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6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8 AMELIA OLIDE,

) 1:05cv585 OWW DLB

9  
10 Plaintiff,

) ORDER REGARDING PLAINTIFF'S  
) SOCIAL SECURITY COMPLAINT

11 v.

12 JO ANNE B. BARNHART, Commissioner  
13 of Social Security,

14 Defendant.  
15

16 **BACKGROUND**

17 Plaintiff Amelia Olide ("Plaintiff") seeks judicial review of a final decision of the  
18 Commissioner of Social Security ("Commissioner") denying her application for supplemental  
19 security income and disability insurance benefits pursuant to Titles II and XVI of the Social  
20 Security Act. The matter is currently before the Court on the parties' briefs, which were  
21 submitted, without oral argument, for Findings and Recommendations to the District Court.  
22

23 **FACTS AND PRIOR PROCEEDINGS<sup>1</sup>**

24 Plaintiff filed her applications for supplemental security income and disability insurance  
25 benefits on July 3, 2002, alleging disability since September 5, 2001, due to pain in her hands  
26 upon movement. AR 53-55, 57-66, 277-279. After being denied both initially and upon  
27

28 <sup>1</sup> References to the Administrative Record will be designated as "AR," followed by the appropriate page number.

1 reconsideration, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). AR  
2 32-35, 37-41, 42-43. On August 6, 2003, ALJ James M. Mitchell held a hearing. AR 291-327.  
3 On December 5, 2003, ALJ Mitchell found that Plaintiff was not disabled. AR 14-26. On March  
4 7, 2005, the Appeals Council denied Plaintiff’s request for review. AR 5-9.

5 Hearing Testimony

6 \_\_\_\_\_ALJ Mitchell held a hearing on August 6, 2003, in Stockton, California. Plaintiff  
7 appeared with her attorney, Franz Criego. Vocational expert (“VE”) Guy E. Deaner also  
8 appeared and testified. AR 291.

9 \_\_\_\_\_Plaintiff testified that she was 48 years old and completed the seventh grade. AR 294.  
10 She stopped working in September 2001 because of pain in her arms and hands. AR 295.  
11 Plaintiff last worked as a machine operator in a cannery. AR 296. Plaintiff also worked as a  
12 campus supervisor, agricultural sorter, and as an in-home caregiver. AR 297, 299, 300.

13 Plaintiff explained that she could not return to these jobs because of pain in both hands,  
14 her legs and sometimes in her back. AR 301. She receives food stamps and assistance from her  
15 children. AR 302. When asked why she chose the date of September 5, 2001, as the date her  
16 disability began, Plaintiff first responded that that was when she was having trouble with her  
17 hands but then admitted that she was laid off. AR 303.

18 She currently lives with her friend and her friend’s two children. AR 304. She prepares  
19 meals for herself twice a day and washes dishes once a day. AR 305. She vacuums once a week,  
20 does laundry twice a month, and goes shopping about twice a month. AR 305. She makes her  
21 bed daily and changes the sheets twice a week. AR 306. She watches about an hour of television  
22 a day and reads for about 30 minutes a day. AR 306. She visits with friends and relatives twice  
23 a week. AR 306. She lays down and sleeps the rest of the day. AR 307. She attends church  
24 twice a week. AR 307. She also walks to the park and to the store, and watches the children  
25 outside. AR 307. She has a driver’s license and drives about four times per week. AR 308. She  
26 drives to her doctors, to church, to the store, to the cemetery and to school to pick up her  
27 grandchildren. AR 309. Plaintiff testified that she sleeps about four to five hours in a 24-hour  
28 period and takes medication three times a day. AR 309.

1 Plaintiff has been seeing her treating physician, Dr. Farley, for about a year. Dr. Farley  
2 has not imposed any physical restrictions. AR 310. She is not currently seeing any mental health  
3 professional. AR 310.

4 Plaintiff thought that she could stand for 20 minutes, sit for 30 minutes, and walk about  
5 five blocks. AR 311-312. She can put on her own shoes and socks and doesn't have any  
6 problems reaching to the front or side. AR 312. She can't reach overhead because she is unable  
7 to lift her arms. Her arms start hurting at the shoulders. AR 312. She has problems holding on  
8 to things because her hands and fingers start hurting, mostly in her right hand. AR 313. She  
9 doesn't have any trouble picking up or holding onto pens. AR 313. She can dress and bathe  
10 herself. AR 316-317.

11 Plaintiff told the ALJ that her hands, legs, waist and neck hurt. AR 315. On an average  
12 day, she feels moderate, continuous numbness, burning and aching. AR 315. The pain is worse  
13 in the morning and becomes worse when she sits down. AR 315-316. The pain is better when  
14 she lays down and medications help. AR 316. Plaintiff also indicated that she has headaches  
15 sometimes, that her neck burns, and that she feels tired and sometimes worthless. AR 317.

16 When asked by her attorney if she recalled a conversation with Dr. Farley during which  
17 Dr. Farley indicated that Plaintiff could not lift more than 10 pounds frequently and 25 pounds  
18 occasionally because of her carpal tunnel syndrome, Plaintiff said yes. AR 317. When  
19 questioned by the ALJ regarding her recollection, Plaintiff indicated that she remembered that the  
20 conversation took place in Dr. Farley's office, but nothing else. AR 318.

21 Plaintiff's attorney asked her if she was trying to paint herself "favorably" to the ALJ, and  
22 she indicated that she was. AR 319. She sleeps most of the day and most of the night. AR 318-  
23 319. Although she told the ALJ that she goes to church twice a week, she rarely attends church.  
24 AR 319. She has had two surgeries for her carpal tunnel and has received no release. AR 319.  
25 Plaintiff identified Maria Velasquez, who was in attendance, as her former supervisor at the  
26 cannery, and indicated that Ms. Velasquez, if called as a witness, would testify that Plaintiff  
27 could not perform her past work in the cannery because of her inability to lift the canning boxes  
28 and materials and her psychological problem. AR 320.

1 For the first hypothetical, the ALJ asked the VE to assume a person of Plaintiff's age,  
2 limited education, and work history, who had a light RFC. Specifically, this person could lift,  
3 push and pull 20 pounds occasionally and 10 pounds frequently. She can walk and stand  
4 frequently and sit, stoop or bend occasionally. This person could return to Plaintiff's past  
5 relevant work as campus supervisor or agricultural sorter. This person could also perform the  
6 positions of car wash attendant, parking lot booth cashier, and cafeteria attendant. AR 322.

7 For the second hypothetical, the ALJ added the non-exertional limitations of diminished,  
8 but correctable vision, a slight (six hours or less per shift) limitation in overhead reaching with  
9 both extremities, a slight limitation in gross manipulation with the right dominate feature, and a  
10 slight limitation in the ability to do simple, routine tasks. This person also needed occasional  
11 supervision and had slight to moderate pain. This person could return to Plaintiff's past relevant  
12 work as campus supervisor and agricultural sorter, with a ten percent erosion. AR 323.

13 If this person was slightly limited in attention, concentration, understanding and memory,  
14 moderately (three hours or less per shift) limited in overhead reaching with both extremities, and  
15 moderately limited in gross manipulative ability with the right dominant feature, she could return  
16 to the position of campus supervisor. AR 323. There would be a 50 percent erosion for the  
17 positions of car wash attendant, parking lot booth cashier, and cafeteria attendant. AR 324.

18 If this person has moderate to severe pain but is only slightly limited in the ability to  
19 perform simple, routine tasks, this person could return to Plaintiff's past relevant work as campus  
20 supervisor, with 70 percent erosion. AR 324.

21 If this person is moderately limited in the ability to perform simple, routine tasks, this  
22 person could not perform Plaintiff's past work as campus supervisor. AR 324.

23 For the third hypothetical, the ALJ asked the VE to assume an individual that could lift,  
24 push and pull 10 pounds occasionally and five pounds frequently, walk, stand, stoop and bend  
25 occasionally and sit frequently. AR 324. This person could not return to Plaintiff's past relevant  
26 work, but could perform the jobs of hand packer, surveillance system monitor and nut sorter. AR  
27 324-325.

1 For the fourth hypothetical, the ALJ added the following non-exertional limitations to the  
2 exertional limitations set forth in the third hypothetical: diminished, but correctable vision, a  
3 slight (six hours or less per shift) limitation in overhead reaching with both extremities, a slight  
4 limitation in gross manipulation with the right dominate feature, and a slight limitation in the  
5 ability to do simple, routine tasks. This person also needed occasional supervision and had slight  
6 to moderate pain. This person could perform the positions of hand packer, surveillance system  
7 monitor and nut sorter, with a ten percent erosion. AR 325.

8 If this person was slightly limited in attention, concentration, understanding and memory,  
9 moderately (three hours or less per shift) limited in overhead reaching with both extremities, and  
10 moderately limited in gross manipulative ability with the right dominant feature, there would be a  
11 50 percent erosion in the positions of hand packer, surveillance system monitor and nut sorter.  
12 AR 325-326.

13 If this person was moderately limited in the ability to perform simple, routine tasks, this  
14 person could not perform, this person would not be able to perform any of the above positions.  
15 AR 326.

16 Medical Record

17 Plaintiff was treated for type II diabetes mellitus from 1998 though at least June 2003.  
18 AR 121, 194. During this time, she was consistently diagnosed with type II diabetes mellitus,  
19 hypertension, carpal tunnel syndrome and depression related to chronic pain. AR 194, 196, 199,  
20 202-204, 208, 218, 220-223. Her blood sugar, hypertension and depression were improved with  
21 medication. AR 196, 199, 202-204. It was also noted that her depression resolve when her stress  
22 resolved. AR 220.

23 Plaintiff underwent x-rays of her knees on October 1, 1998. There was minimal  
24 degenerative change with spurring of the patella in her right knee, and minimal degenerative  
25 change with spur formation of the patella in her left knee. AR 231.

26 Plaintiff underwent left shoulder x-rays on September 29, 2000. The x-rays revealed  
27 spurring of the proximal humerus. AR 227.  
28

1 On October 31, 2000, Plaintiff underwent x-rays of her cervical spine. The x-ray revealed  
2 minimal degenerative change of the lower cervical spine. AR 226.

3 An x-ray of Plaintiff's wrist taken on March 16, 2001, was normal. AR 225.

4 Plaintiff saw her treating orthopedist, Robert Caton, M.D., on April 30, 2002. EMG  
5 studies were compatible with bilateral carpal tunnel syndrome. Plaintiff had positive Tinel's and  
6 Phalen's test with decreased sensation in a median nerve distribution. She complained of  
7 continuous pain and problems with numbness and tingling. Dr. Caton indicated that surgery was  
8 necessary due to her poor response to conservative treatment. AR 123.

9 On June 4, 2002, Dr. Caton performed right carpal tunnel release surgery. She tolerated  
10 the procedure well and without complications. AR 107-108.

11 Plaintiff returned to Dr. Caton for a follow-up on June 21, 2002. Despite a trip to the  
12 emergency room for a superficial wound infection, the wound looked good, she had minimal  
13 complaints of pain and appeared to be doing "rather well." Dr. Caton indicated that nothing  
14 other than simple, conservative treatment was necessary. AR 117.

15 Plaintiff saw Dr. Caton on June 24, 2002, and she was doing well. Her preoperative pain  
16 had "greatly dissipated" and she was "much improved." AR 118. Dr. Caton told Plaintiff to  
17 work with gentle range of motion and strengthening exercises, as tolerated, and indicated that  
18 Plaintiff was unable to work for a period of eight weeks. AR 118.

19 On August 14, 2002, State Agency physician David Pong, M.D., completed a Physical  
20 Residual Functional Capacity Assessment form. Dr. Pong opined that Plaintiff could lift and  
21 carry 20 pounds occasionally and 10 pounds frequently, could stand and/or walk for about six  
22 hours in an eight hour day, and sit for about six hours in an eight hour day. Plaintiff could  
23 occasionally use her bilateral upper extremities to push/pull. She could perform occasional  
24 handling and fingering, and could frequently climb ramps and stairs, balance, stoop, kneel,  
25 crouch and crawl. She could never climb ladders, ropes or scaffolds. She could not perform  
26 forceful gripping or twisting. AR 133-140.

27 Plaintiff saw Dr. Caton on September 25, 2002, for a follow-up. She was doing well with  
28 her right hand and the surgery had worked out well. She had "greatly dissipated symptomology"

1 in her right hand. Plaintiff needed the release done on her left hand, and Dr. Caton opined that  
2 Plaintiff would not be able to work for two months following the procedure. AR 210.

3 Plaintiff underwent left carpal tunnel release on November 5, 2002, and was doing well  
4 on November 14, 2002. AR 204.

5 On December 17, 2002, Plaintiff saw Rebecca Jordan, M.D., for a neurological  
6 evaluation. Plaintiff complained of numbness and stabbing and pinching pain in her hands,  
7 worse in the left than the right. She also complained of pins and needles and tingling in her feet.  
8 On examination, range of motion in her back was normal, she had no muscle spasms in her back,  
9 and her straight leg raising test was negative. She had normal muscle bulk and tone, but strength  
10 testing in her hands was hampered by pain. Plaintiff reported decreased sensation in the right  
11 hand and decreased sensation and hypersensitivity in the left hand. She has positive Phalen's test  
12 bilaterally and positive Tinel's test in the left wrist. Dr. Jordan diagnosed bilateral carpal tunnel  
13 syndrome, status-post bilateral surgeries, with continued pain and numbness in both hands,  
14 hypertension, and type II diabetes mellitus, under inadequate control. Dr. Jordan indicated that  
15 Plaintiff was limited to occasional handling, manipulation and use of push-pull devices with  
16 either hand. She could stand and walk about six hours with customary breaks, and her sitting  
17 was unrestricted. She could lift and carry 25 pounds occasionally and 10 pounds frequently. AR  
18 157-161.

19 On January 24, 2003, State Agency physician Sandra Clancey, M.D., completed a  
20 Physical Residual Functional Capacity Assessment form. Dr. Clancey opined that Plaintiff could  
21 lift and carry 20 pounds occasionally and 10 pounds frequently, could stand and/or walk for  
22 about 6 hours in an eight hour day, and sit for about six hours in an eight hour day. She was  
23 unlimited in pushing/pulling. She could occasionally climb ladders, but never ropes or scaffolds.  
24 She was precluded from constant forceful gripping, grasping, wrist torquing, or keying and  
25 typing, although she could occasionally perform these activities. Plaintiff could frequently  
26 balance, stoop, kneel, crouch and crawl. AR 165-172. Dr. Clancey noted that there was no  
27 evidence of end organ damage due to diabetes. AR 170.

1 \_\_\_\_\_ On April 28, 2003, Plaintiff's treating physician, Joy Farley, M.D., completed a  
2 questionnaire. Dr. Farley opined that Plaintiff's carpal tunnel syndrome prevented her from  
3 performing more than sedentary work. She was unrestricted in sitting and standing/walking. She  
4 could lift 10 pounds frequently and 25 pounds occasionally. Plaintiff could perform reaching,  
5 handling, feeling, pushing/pulling and grasping for less than one third of the day each, and could  
6 perform each activity for 10-20 minutes at a time. Dr. Farley indicated that these limitations  
7 began on June 20, 2001. AR 244-245.

8 \_\_\_\_\_ Plaintiff was evaluated by psychologist Robert L. Morgan, Ph.D., on July 7, 2003.  
9 Plaintiff reported that she had diabetes, hypertension and allergies, and that she was status post  
10 bilateral carpal tunnel surgery. Plaintiff also reported that in 2002, she was in a motor vehicle  
11 accident during which a Mayflower moving van reversed over her car. Plaintiff reported that she  
12 sustained injuries relative to whiplash and that a lawsuit was initiated. On mental status  
13 examination, Plaintiff presented in a severely depressed mood, was tearful throughout the  
14 evaluation, and acknowledged periodic suicidal ideation. Her affect was significantly restricted,  
15 but she denied any hallucinations. Her thought process was logical and goal-oriented. AR 247-  
16 252.

17 Dr. Morgan diagnosed major depressive disorder, single episode, severe, without  
18 psychosis, post traumatic stress disorder, pain disorder associated with psychological factors and  
19 a general medical condition, and a personality disorder, not otherwise specified. AR 253. He  
20 opined that Plaintiff had marked restrictions in her activities of daily living, maintaining social  
21 functioning, and maintaining concentration, persistence or pace. She was mildly impaired in her  
22 ability to understand, remember and carry out simple, one-to-two step instructions, but could  
23 maintain concentration and attention for at least two hour increments. Her ability to carry out  
24 technical or complex instructions was markedly limited, as was her ability to relate and interact  
25 with supervisors, co-workers and the public. Dr. Morgan opined that Plaintiff could not  
26 withstand the stressors and pressures associated with an eight hour workday. He characterized  
27 her prognosis at "quite guarded" and indicated that she was "thought to have been disabled"  
28 since she applied for social security benefits. AR 255.



1        ALJ's Findings

2        The ALJ determined that Plaintiff had the severe impairments of diabetes mellitus, carpal  
3 tunnel syndrome, hypertension and obesity. AR 19. Despite these impairments, the ALJ found  
4 that Plaintiff retained the RFC to perform light work, but was slightly limited in her ability to  
5 reach overhead with either upper extremity, and could occasionally climb, balance, stoop, crouch,  
6 crawl and kneel. She was moderately limited in her ability to perform fine manipulation with her  
7 right, dominant upper extremity. Her frequency of moderate to severe pain results in a slightly  
8 decreased ability to perform simple, routine repetitive tasks. AR 22. Based on this RFC, the  
9 ALJ found that Plaintiff could perform her past relevant work as campus monitor. Alternatively,  
10 based on the testimony of the VE and the Medical-Vocational Rules, the ALJ found Plaintiff not  
11 disabled. AR 25.

12                                **SCOPE OF REVIEW**

13        Congress has provided a limited scope of judicial review of the Commissioner's decision  
14 to deny benefits under the Act. In reviewing findings of fact with respect to such determinations,  
15 the Court must determine whether the decision of the Commissioner is supported by substantial  
16 evidence. 42 U.S.C. 405 (g). Substantial evidence means "more than a mere scintilla,"  
17 *Richardson v. Perales*, 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v.*  
18 *Weinberger*, 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a  
19 reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at  
20 401. The record as a whole must be considered, weighing both the evidence that supports and  
21 the evidence that detracts from the Commissioner's conclusion. *Jones v. Heckler*, 760 F.2d 993,  
22 995 (9th Cir. 1985). In weighing the evidence and making findings, the Commissioner must  
23 apply the proper legal standards. *E.g.*, *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988).  
24 This Court must uphold the Commissioner's determination that the claimant is not disabled if the  
25 Secretary applied the proper legal standards, and if the Commissioner's findings are supported by  
26 substantial evidence. *See Sanchez v. Sec'y of Health and Human Serv.*, 812 F.2d 509, 510 (9th  
27 Cir. 1987).

## REVIEW

In order to qualify for benefits, a claimant must establish that he is unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 1382c (a)(3)(A). A claimant must show that he has a physical or mental impairment of such severity that he is not only unable to do her previous work, but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990).

In an effort to achieve uniformity of decisions, the Commissioner has promulgated regulations which contain, inter alia, a five-step sequential disability evaluation process. 20 C.F.R. §§ 404.1520 (a)-(f), 416.920 (a)-(f) (1994).<sup>2</sup> Applying this process in this case, the ALJ found that Plaintiff: (1) had not engaged in substantial gainful activity since the alleged onset of his disability; (2) has an impairment or a combination of impairments that is considered “severe” (diabetes mellitus, carpal tunnel syndrome, hypertension and obesity) based on the requirements in the Regulations (20 CFR §§ 416.920(b)); (3) does not have an impairment or combination of impairments which meets or equals one of the impairments set forth in Appendix 1, Subpart P, Regulations No. 4; (4) can perform her past relevant work as campus monitor; and alternatively, (5) retains the RFC to perform a significant range of light work. AR 24-25.

Plaintiff argues that the ALJ (1) did not properly develop or evaluate the mental health evidence; and (2) failed to properly evaluate Plaintiff’s RFC.

## DISCUSSION

### A. Mental Health Evidence

Plaintiff argues that the ALJ failed to properly consider the mental health record by failing to properly credit Plaintiff for taking medication for depression, failing to properly credit

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<sup>2</sup>All references are to the 2002 version of the Code of Federal Regulations unless otherwise noted.

1 Dr. Morgan's report, and for substituting his opinion for that of the psychiatrist. She also  
2 contends that the ALJ should have further developed the mental health record.

3 Credibility determinations are the province of the ALJ. *Andrews v. Shalala*, 53 F.3d  
4 1035, 1039 (9th Cir. 1995). In assessing the evidence of Plaintiff's depression, the ALJ noted  
5 that Plaintiff reported that she does not want to get out of bed some days and that she locks  
6 herself in her room because she feels so depressed and helpless. AR 19. The ALJ found her  
7 testimony not wholly credible, in light of the evidence suggesting that her depression improved  
8 with medication and decreased stress. AR 19. The ALJ also noted that when Plaintiff saw Dr.  
9 Morgan at the request of her attorney, on July 7, 2003, Plaintiff reported that she had not  
10 previously sought mental health treatment. AR 21. Similarly, despite Dr. Morgan's finding of  
11 marked limitations, Plaintiff testified at the hearing that she is not seeking any mental health  
12 treatment. AR 22; *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (ALJ is permitted to  
13 consider lack of medical treatment in assessing credibility). The ALJ's citation to these  
14 inconsistencies is sufficient to allow the Court to conclude that the ALJ did not arbitrarily reject  
15 Plaintiff's testimony. *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002).

16 The ALJ also thoroughly reviewed Dr. Morgan's report and opinion. As an examining  
17 doctor, Dr. Morgan's opinion can only be rejected for specific and legitimate reasons that are  
18 supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th  
19 Cir.1995). Here, the ALJ first explained that the Dr. Morgan gave undue weight to the Plaintiff's  
20 subjective complaints. *Thomas*, 278 F.3d at 958-959; *Fair v. Bowen*, 885 F.2d 597, 603-605 (9th  
21 Cir. 1989) (ALJ entitled to reject opinion based on properly discredited subjective complaints).  
22 Indeed, the ALJ explained that Plaintiff's testimony that she was not seeking mental health  
23 treatment "flies in the face of the purportedly marked limitations" noted by Dr. Morgan, and that  
24 if Plaintiff were "truly functioning with marked impairments she both would have sought  
25 treatment, and her treating physicians would have noted marked symptoms and would have  
26 prescribed more significant treatment." AR 22. The ALJ also noted the inconsistencies in  
27 Plaintiff's report of daily activities, explaining that in contrast to what she told Dr. Morgan, she  
28 testified to a wide variety to daily activities. AR 22. Finally, the ALJ documented Plaintiff's

1 manicured nails and noted that this shows that Plaintiff cared about her personal appearance. AR  
 2 22. *Fair*, 885 F.2d at 603 (ALJ may properly reject subjective complaints based on ability to  
 3 engage in activities inconsistent with such complaints).

4 The ALJ also questioned Dr. Moragn's diagnosis of post traumatic stress disorder  
 5 resulting from a 2002 motor vehicle accident. AR 22. The ALJ explained that there is little, if  
 6 any, evidence in the record that this accident caused any significant injury.<sup>3</sup> AR 22. This was a  
 7 proper consideration. *Magallanes v. Bowen*, 881 F.2d 747, 754 (9th Cir. 1989) (lack of objective  
 8 medical support is an appropriate basis for rejecting medical opinion).

9 The ALJ gave specific and legitimate reasons for rejecting Dr. Morgan's opinion. Insofar  
 10 as Plaintiff contends that the ALJ should have developed the record, her argument is without  
 11 merit. There is no indication that the evidence was ambiguous or inadequate to allow for proper  
 12 evaluation. *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir.2001). Instead, the medical  
 13 evidence and Plaintiff's own testimony demonstrate that her depression was sufficiently  
 14 controlled with medication and did not cause the marked limitations suggested by Dr. Morgan.

#### 15 B. RFC Finding

16 \_\_\_\_\_ Next, Plaintiff argues that the ALJ failed to properly credit the medical opinions in  
 17 making his RFC determination. Plaintiff's argument focuses on the RFC finding as to the use of  
 18 her hands and the implication of her pain.

19 RFC is an assessment of an individual's ability to do sustained work-related physical and  
 20 mental activities in a work setting on a regular and continuing basis of 8 hours a day, for 5 days a  
 21 week, or equivalent work schedule. SSR 96-8p. The RFC assessment must be based on all of  
 22 the relevant evidence in the record, including the effects of symptoms that are reasonably  
 23 attributed to a medically determinable impairment. SSR 96-8p. In addition, the adjudicator  
 24 "must consider limitations and restrictions imposed by all of an individual's impairments, even  
 25 those that are not 'severe,'" because such limitations may be outcome determinative when  
 26 \_\_\_\_\_

27 <sup>3</sup> The year of the accident is unclear as Dr. Morgan reports that the accident occurred in 2001 and 2002.  
 28 This does not change the fact that there is little, if any, evidence of such an accident, whether it occurred in 2001 or 2002.

1 considered in conjunction with limitations or restrictions resulting from other impairments. SSR  
2 96-8p.

3 Here, the ALJ found that Plaintiff retained the RFC to perform light work, but was  
4 slightly limited in her ability to reach overhead with either upper extremity, and could  
5 occasionally climb, balance, stoop, crouch, crawl and kneel. She was moderately limited in her  
6 ability to perform fine manipulation with her right, dominant upper extremity. Her frequency of  
7 moderate to severe pain resulted in a slightly decreased ability to perform simple, routine  
8 repetitive tasks. AR 22.

9 In making this assessment, the ALJ gave “great weight” to Dr. Caton’s September 25,  
10 2002, report that Plaintiff’s right hand was doing well following surgery and that her  
11 symptomology had greatly dissipated. AR 20. The ALJ determined that this was consistent with  
12 the evidence, including the objective findings on examination.

13 The ALJ also gave “great weight” to the April 28, 2003, assessment of treating physician  
14 Dr. Farley, which indicated that Plaintiff could lift 25 pounds occasionally and 10 frequently,  
15 could reach, handle, feel, push/pull or grasp for ten to 20 minutes at a time for a total of less than  
16 one-third of an eight hour day. AR 20, 244-245. The ALJ determined that this assessment, to  
17 the extent that the manipulation restrictions correspond with a moderately limited ability to  
18 perform fine manipulation with her right, dominant, upper extremity, was consistent with the  
19 evidence. The ALJ was entitled to rely on Dr. Farley’s assessment. *Crane v. Shalala*, 76 F.3d  
20 251, 253 (9th Cir. 1995).

21 Next, the ALJ reviewed Dr. Jordan’s examination and findings, and gave “great weight”  
22 to her assessment that Plaintiff could occasionally handle, manipulate, and use push/pull devices  
23 with either hand. AR 21, 161. Dr. Jordan’s assessment was based on her independent clinical  
24 examination of Plaintiff and therefore constitutes substantial evidence. *Andrews v. Shalala*, 53  
25 F.3d 1035, 1041 (9th Cir. 1995).

26 The ALJ also set forth the assessments of the State Agency physicians, and gave  
27 “significant weight” to the finding that Plaintiff could perform light work with occasional use of  
28 either of her upper extremities, could occasionally handle and finger, and could occasionally

1 grasp, torque, forcefully grip or type on a keyboard. AR 21. In assessing a claimant's RFC, the  
2 ALJ may rely upon the state agency physician's findings as to claimant's ability. 20 C.F.R. §§  
3 404.1513(c), 404.1527(f)(2)(I), 416.913(c), 416.927(f)(2)(I). These findings were also consistent  
4 with the opinions of Dr. Farley and Dr. Jordan and serve as substantial evidence. *Thomas*, 278  
5 F.3d at 957 (opinions of non-treating, non-examining physicians consistent with independent  
6 clinical findings may serve as substantial evidence).

7 Plaintiff argues that the evidence supports a finding that she is more than occasionally  
8 restricted in the use of both hands, that her left hand is restricted, and that her limitations go  
9 beyond mere manipulation limitations in the right hand. Plaintiff points to the assessments of  
10 two of the State Agency physicians, who opined that Plaintiff could never forcefully grip or twist.  
11 Although the ALJ adopted the bulk of the State Agency physicians' opinions, he did not believe  
12 that a complete prohibition against forceful gripping and twisting was supported by the medical  
13 record. AR 21. The ALJ is responsible for resolving conflicts in the medical evidence and was  
14 entitled to adopt a portion of their opinions. *Magallanes*, 881 F.2d at 750, 753.

15 Plaintiff also argues that the ALJ made an inconsistent RFC finding insofar as he found  
16 that Plaintiff suffered from moderate to severe pain, but found that she only had a mild  
17 concentration limitation. Without explanation or support, Plaintiff appears to argue that  
18 moderate to severe pain should automatically result in a finding of a severe limitation in  
19 concentration. However, there is no evidence that Plaintiff suffers from severe limitations in  
20 concentration. Indeed, even Dr. Morgan found that Plaintiff was only mildly limited in her  
21 ability to understand, remember and carry out simple, one-to-two step tasks. AR 255. The ALJ  
22 likely gave Plaintiff the benefit of the doubt in finding that her pain resulted in a slightly  
23 decreased ability to perform simple, routine tasks.

#### 24 **RECOMMENDATION**

25 Based on the foregoing, the Court finds that the ALJ's decision is supported by  
26 substantial evidence in the record as a whole and is based on proper legal standards.  
27 Accordingly, the Court RECOMMENDS that Plaintiff's appeal from the administrative decision  
28

1 of the Commissioner of Social Security be DENIED and that JUDGMENT be entered for  
2 Defendant Jo Anne B. Barnhart and against Plaintiff Amelia Olide.

3 These findings and recommendations will be submitted to the Honorable Oliver W.  
4 Wanger, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fifteen (15) days after  
5 being served with these findings and recommendations, the parties may file written objections  
6 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
7 and Recommendations." The parties are advised that failure to file objections within the  
8 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
9 F.2d 1153 (9th Cir. 1991).

10  
11 IT IS SO ORDERED.

12 **Dated: April 25, 2006**  
13 3b142a

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE